

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

Bill Hosko,

Complainant,

vs.

Shannon Cady,¹ Property Manager,
Mears Park Place Apartments,

Respondent.

NOTICE OF DETERMINATION OF
PRIMA FACIE VIOLATION
AND
NOTICE OF AND ORDER FOR
PROBABLE CAUSE HEARING

**TO: Bill Hosko, 56 East Sixth Street, Suite 305, St. Paul, MN 55101; and
Shannon Cady, Property Manager, Mears Park Place Apartments, 401
Sibley Street, St. Paul, MN 55101.**

On October 30, 2007, Bill Hosko filed a Campaign Complaint with the Office of Administrative Hearings alleging that the Respondent violated Minn. Stat. § 211B.20 by denying him access to the Mears Park Place Apartment building for the purpose of campaigning. After reviewing the Complaint, the undersigned Administrative Law Judge has determined that the Complaint sets forth a prima facie violation of § 211B.20.

THEREFORE, IT IS HEREBY ORDERED AND NOTICE IS HEREBY GIVEN that this matter is scheduled for a probable cause hearing to be held by telephone before the undersigned Administrative Law Judge at **2:00 p.m. on Friday, November 2, 2007**. The hearing will be held by call-in telephone conference. You must call: **1-800-619-4439** at that time. Follow the directions and enter the code **"19319"** when asked for the meeting number. The probable cause hearing will be conducted pursuant to Minn. Stat. § 211B.34. Information about the probable cause proceedings and copies of state statutes may be found online at www.oah.state.mn.us and www.revisor.leg.state.mn.us.

At the probable cause hearing all parties have the right to be represented by legal counsel, by themselves, or by a person of their choice if not otherwise prohibited as the unauthorized practice of law. In addition, the parties have the right to submit evidence, affidavits, documentation and argument for consideration by the Administrative Law Judge. Parties should provide to the Administrative Law Judge all evidence bearing on the case, with copies to the opposing party, before the telephone conference takes place. Documents may be faxed to Judge Luis at 651-361-7936.

At the conclusion of the probable cause hearing, the Administrative Law Judge will either: (1) dismiss the complaint based on a determination that the

¹ The caption has been changed to reflect the correct spelling of Ms. Cady's name.

complaint is frivolous, or that there is no probable cause to believe that the violation of law alleged in the complaint has occurred; or (2) determine that there is probable cause to believe that the violation of law alleged in the complaint has occurred and refer the case to the Chief Administrative Law Judge for the scheduling of an evidentiary hearing. Evidentiary hearings are conducted pursuant to Minn. Stat. § 211B.35. If the Administrative Law Judge dismisses the complaint, the complainant has the right to seek reconsideration of the decision on the record by the Chief Administrative Law Judge pursuant to Minn. Stat. § 211B.34, subd. 3.

A failure by a Respondent to participate and appear by telephone at this probable cause hearing may result in a finding that the Respondent is in default, that the Complainant's allegations contained in the Complaint may be accepted as true, and that the Presiding Administrative Law Judge may dispose of the Complaint according to Minn. Stat. § 211B.35, subd. 2.

Any party who needs an accommodation for a disability in order to participate in this hearing process may request one. Examples of reasonable accommodations include wheelchair accessibility, an interpreter, or Braille or large-print materials. If any party requires an interpreter, the Administrative Law Judge must be promptly notified. To arrange an accommodation, contact the Office of Administrative Hearings at 600 North Robert Street, Saint Paul, MN, 55101, or call 651-361-7900 (voice) or 651-361-7878 (TTY).

Dated: October 31, 2007

/s/ Richard C. Luis
RICHARD C. LUIS
Administrative Law Judge

MEMORANDUM

Bill Hosko is a candidate for St. Paul City Council Ward 2.² According to his Complaint, the Property Manager of the Mears Park Place Apartments, Shannon Cady, will not allow him access to the individual units of the apartment building to distribute his campaign literature. The Mears Park Place Apartments are located in downtown St. Paul. The Complainant alleges that Ms. Cady did allow him access to the apartment units in September to distribute an earlier version of his campaign literature, but that now she will only allow him to schedule a "meet and greet" at the apartment building. The Complaint maintains that by denying Mr. Hosko access to the individual apartment units to distribute his most recent campaign literature, Ms. Cady has violated Minn. Stat. § 211B.20.

² Ward 2 serves the downtown, west side, and Rice street areas of St. Paul.

Minn. Stat. § 211B.20 prohibits denying access to political candidates to campaign in multiple unit dwellings. The statute provides as follows:

Subdivision 1. **Prohibition.** It is unlawful for a person, either directly or indirectly, to deny access to an apartment house, dormitory, nursing home, manufactured home park, other multiple unit facility used as a residence, . . . to a candidate who has filed for election to public office or to campaign workers accompanied by the candidate, if the candidate and workers seeking admittance to the facility do so solely for the purpose of campaigning. A violation of this section is a petty misdemeanor.

Subd. 2. **Exceptions.** Subdivision 1 does not prohibit:

- (1) denial of admittance into a particular apartment, room, manufactured home, or personal residential unit;
- (2) requiring reasonable and proper identification as a necessary prerequisite to admission to a multiple unit dwelling;
- (3) in the case of a nursing home, denial of permission to visit certain persons for valid health reasons;
- (4) limiting visits by candidates or workers accompanied by the candidate to a reasonable number of persons or reasonable hours;
- (5) requiring a prior appointment to gain access to the facility; or
- (6) denial of admittance to or expulsion from a multiple unit dwelling for good cause.

In reviewing the Complaint to determine whether it sets forth a prima facie violation of the statute, the Administrative Law Judge is required to credit as true all of the facts that are alleged in the Complaint, provided that those facts are not “patently false” or “inherently incredible.”³

The issue presented in this complaint is whether the alleged limitations placed by Ms. Cady on Mr. Hosko’s access to the apartment building amount to a denial of access in violation of Minn. Stat. § 211B.20. The Administrative Law Judge concludes that the complaint does allege sufficient facts to support finding a prima facie violation of Minn. Stat. § 211B.20 as against Ms. Cady. This matter will proceed to a probable cause hearing where the Administrative Law Judge will determine whether the facts available establish a reasonable belief that Ms. Cady committed a violation that would require her to go to hearing on the merits.⁴

R.C.L.

³ See, e.g., *Halverson v. Nelson*, OAH Docket No. 4-6301-16282-CV, slip op. at 2 (2004); compare also, *Elzie v. Commissioner of Pub. Safety*, 298 N.W.2d 29, 32 (Minn. 1980) (Dismissal of a complaint is proper only if it appears to a certainty that plaintiff can introduce no facts consistent with the complaint to support granting the relief requested).

⁴ *State v. Florence*, 239 N.W.2d 892, 902 (Minn. 1976).